



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBb0510/1

JK:wlj:jf

Stays

RM mtr

LFB:.....Shanovich (RR) - Combined tax reporting

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2007 SENATE BILL 40

in 6-22-07

Insert 1-1

1 At the locations indicated, amend the substitute amendment as follows:

2 ~~1.~~ Page 922, line 19: after that line insert:

3 ~~"SECTION 2018d. 71.25 (9) (a) of the statutes is amended to read:~~

4 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total
5 sales of the taxpayer in this state during the tax period, and the denominator of
6 which is the total sales of the taxpayer everywhere during the tax period. For sales
7 of tangible personal property, the numerator of the sales factor is the sales of the
8 taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the
9 taxpayer during the tax period under pars. (b) 2m. and 3. and (c). For purposes of
10 determining the numerator of the sales factor for a member of a combined reporting

1 group under s. 71.255 (7), "taxpayer" means the member of a combined reporting
2 group, as defined in s. 71.255 (1) (c), that transferred title to tangible personal
3 property or, for sales other than sales of tangible personal property, that made the
4 sale.

5 ⁵ **SECTION 2018g.** 71.255 of the statutes is created to read:

6 **71.255 Combined reporting. (1) DEFINITIONS.** In this section:

7 (a) "Brother-sister parent corporation" means a parent corporation that is a
8 member of a commonly controlled group, if any members of the commonly controlled
9 group are not connected to the parent corporation by stock ownership or interest
10 ownership as described in par. (d). *return under 7624 that is filed on a*

11 (b) "Combined report" means a form prescribed by the department that
12 specifies the income of each taxpayer member of a commonly controlled group
13 operating as a unitary business.

14 (c) "Combined reporting group" means the members of a commonly controlled
15 group that are included in a combined report under sub. (2).

16 (d) "Commonly controlled group" means any of the following, but does not
17 include an insurer that is exempt from taxation under s. 71.45 (1):

18 1. A parent corporation and any corporation or chain of corporations that are
19 connected to the parent corporation by direct or indirect ownership by the parent
20 corporation if the parent corporation owns stock representing more than 50 percent
21 of the voting power of at least one of the connected corporations or if the parent
22 corporation or any of the connected corporations owns stock that cumulatively
23 represents more than 50 percent of the voting power of each of the connected
24 corporations.

regardless of whether or not the owner is a corporation,

1 2. Any 2 or more corporations if a common owner directly or indirectly owns
2 stock representing more than 50 percent of the voting power of the corporations or
3 the connected corporations.

4 3. A partnership or limited liability company if a parent corporation or any
5 corporation connected to the parent corporation by common ownership directly or
6 indirectly owns more than a 50 percent interest in the capital and profits of the
7 partnership or limited liability company.

8 4. Any 2 or more corporations if stock representing more than 50 percent of the
9 voting power in each corporation are interests that cannot be separately transferred.

10 5. Any 2 or more corporations if stock representing more than 50 percent of the
11 voting power in each corporation is directly owned by, or for the benefit of, family
12 members. In this subdivision, "family member" means an individual related by
13 blood, marriage, or adoption within the 2nd degree of kinship as computed under s.
14 852.03 (2), 1995 stats., or the spouse of such an individual.

15 6. A corporation, partnership, or limited liability company if a parent
16 corporation or any corporation connected to the parent corporation by common
17 ownership does not hold more than a 50 percent ownership interest in the
18 corporation, partnership, or limited liability company but effectively controls the
19 corporation, partnership, or limited liability company.

20 (e) "Corporation" has the meaning given in s. 71.22 (1k) or 71.42 (1).

21 (f) "Department" means the department of revenue.

22 (g) "Designated agent" means the taxpayer member of a commonly controlled
23 group that files a group return on behalf of the taxpayer members of a combined
24 reporting group.

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1 (h) "Group return" means a tax return filed on behalf of the taxpayer members
2 of a combined reporting group.

3 (i) "Intercompany transaction" means a transaction between corporations,
4 partnerships, or limited liability companies that become members of the same
5 combined reporting group immediately after the transaction.

6 (im) "Partnership" means any entity considered a partnership under section
7 7701 of the Internal Revenue Code.

8 (j) "Separate return" means a return filed by a corporation, regardless of
9 whether the corporation is a member of a combined reporting group or is required
10 to file a tax return under s. 71.24 or 71.44.

11 (k) "Taxpayer member" means a corporation that is subject to tax under s. 71.23
12 (1) or (2) or ~~71.43~~ ^{and} that is a member of a combined reporting group, and that files a
13 combined report under this section.

14 (L) "Top-tier corporation" means a member of a commonly controlled group
15 that is not connected with a parent corporation by stock ownership or interest
16 ownership as described in par. (d), is a parent corporation, or is a brother-sister
17 parent corporation, regardless of whether it is doing business in this state or deriving
18 income from sources in this state, and regardless of whether its income and
19 apportionment factors are excluded from a combined report filed under this section.

20 (m) "Unitary business" includes the business activities or operations of an
21 entity that are of mutual benefit to, integrated with, or dependent upon or that
22 contribute to activities of at least one other entity, including transactions that serve
23 an operational function, as determined by the department. Two or more businesses
24 are presumed to be a unitary business if the businesses have unity of ownership,
25 operation, and use as indicated by centralized management or a centralized

1 executive force; centralized purchasing, advertising, or accounting; intercorporate
2 sales or leases; intercorporate services; intercorporate debts; intercorporate use of
3 proprietary materials; interlocking directorates; or interlocking corporate officers.

4 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) Except as provided
5 in par. (b), and subject to sub. (6), a corporation that is subject to the tax imposed
6 under s. 71.23 (1) or (2) or 71.43, that is a member of a commonly controlled group,
7 and that is engaged, in whole or in part, in a unitary business with one or more
8 members of the commonly controlled group shall compute the corporation's income
9 attributable to this state by using the income computation under s. 71.26 or 71.45,
10 the apportionment formula under s. 71.25 (6) or 71.45, and the tax credits under s.
11 71.28 or 71.47 of all of the following that are members of the commonly controlled
12 group:

13 1. Any corporation organized or incorporated under the laws of the United
14 States, any state of the United States, the District of Columbia, the Commonwealth
15 of Puerto Rico, any possession of the United States, or any political subdivision of the
16 United States, including corporations under sections 931 to 936 of the Internal
17 Revenue Code.

18 2. Any domestic international sales corporation under sections 991 to 994 of the
19 Internal Revenue Code.

20 3. Any foreign sales corporation under sections 921 to 927 of the Internal
21 Revenue Code.

22 4. Any export trade corporation under sections 970 and 971 of the Internal
23 Revenue Code.

24 5. Any corporation regardless of its place of incorporation if the average of its
25 property factor under s. 71.25 (7) and its payroll factor under s. 71.25 (8), for property

1 and payroll within the United States and computed on an annual basis, is at least
2 20 percent during any part of the taxable year that a corporation is a member of the
3 commonly controlled group.

4 6. Any corporation not described in subds. 1. to 5. to the extent of the
5 corporation's income within the United States and the corporation's property factor
6 under s. 71.25 (7) and payroll factor under s. 71.25 (8) assignable to a location within
7 the United States.

8 (b) A corporation that is subject to the tax imposed under s. 71.23 (1) or (2) or
9 71.43, that is a member of a commonly controlled group, and that is engaged, in whole
10 or in part, in a unitary business with one or more members of the commonly
11 controlled group may, subject to sub. (6), compute the corporation's income
12 attributable to this state by using the income computation under s. 71.26 or 71.45,
13 the apportionment formula under s. 71.25 (6) or 71.45, and the tax credits under s.
14 71.28 or 71.47 of all the members of the commonly controlled group, regardless of the
15 country in which any member of the commonly controlled group is organized or
16 incorporated or conducts business, if all top-tier corporations that are members of
17 the commonly controlled group elect under sub. (3) to compute the corporation's
18 income as provided under this paragraph.

19 **(3) COMPUTATION ELECTION.** (a) A top-tier corporation that is a member of a
20 commonly controlled group may elect on the commonly controlled group's behalf, and
21 in the manner prescribed by the department, to compute the income of each
22 corporation that is a member of the commonly controlled group under sub. (2) (b).
23 If more than one member of the commonly controlled group is a top-tier corporation,
24 an election under this subsection is not effective unless all top-tier corporations elect

1 on the commonly controlled group's behalf, and in the manner prescribed by the
2 department, to compute income under sub. (2) (b).

3 (b) A top-tier corporation shall file an election made under par. (a) with the
4 department before the last day of the taxable year. The top-tier corporation shall
5 designate a taxable year that corresponds with the taxable year of any taxpayer
6 member that is subject to the tax imposed under s. 71.23 (1) or (2) or 71.43. If the
7 top-tier corporation fails to file the election before the last day of the taxable year
8 designated under this paragraph, all members of the commonly controlled group to
9 which the top-tier corporation belongs, including the top-tier corporation, shall
10 compute income under sub. (2) (a).

11 (c) Except as provided under par. (d), the members of the commonly controlled
12 group subject to an election under this subsection shall compute their income under
13 sub. (2) (b) for 7 taxable years, beginning with the taxable year designated under par.

14 (b). Thereafter, the members of the commonly controlled group shall compute their
15 income under sub. (2) (b) for periods of 7 taxable years and until any top-tier
16 corporation that is a member of the commonly controlled group notifies the
17 department, in a manner prescribed by the department, before the last day of the last
18 taxable year in any period of 7 taxable years that the top-tier corporation is
19 terminating the election under this subsection. A termination under this paragraph
20 takes effect on the first day of the first taxable year beginning after the top-tier
21 corporation notifies the department under this paragraph.

22 (d) The department may grant a request by a top-tier corporation to terminate
23 an election under this subsection before the first period of 7 taxable years under par.

24 (c) expires, if the top-tier corporation shows good cause for granting the request, as

1 determined by the department and consistent with section 1502 of the Internal
2 Revenue Code.

3 (e) Except as provided in par. (f), if an election by a top-tier corporation on
4 behalf of the members of a commonly controlled group under this subsection is
5 terminated, no top-tier corporation may make an election on behalf of the members
6 of the same commonly controlled group until 7 taxable years have elapsed from the
7 day that the termination of the original election took effect.

8 (f) The department may grant a request by a top-tier corporation to make an
9 election under this subsection before the period of 7 taxable years under par. (e) have
10 elapsed, if the top-tier corporation shows good cause for granting the request, as
11 determined by the department and consistent with section 1502 of the Internal
12 Revenue Code.

13 **(4) ACCOUNTING PERIOD.** For purposes of this section, the income under ss. 71.26
14 and 71.45, the apportionment factors under ss. 71.25 and 71.45, and the tax credits
15 under ss. 71.28 and 71.47 of all corporations that are members of a combined
16 reporting group shall be determined by using the same accounting period. If the
17 combined reporting group has a common parent corporation, the accounting period
18 of the common parent corporation shall be used to determine the income, the
19 apportionment factors, and the tax credits of all the corporations that are members
20 of the combined reporting group. If the combined reporting group has no common
21 parent corporation, the income, the apportionment factors, and the tax credits of the
22 combined reporting group shall be determined using the accounting period of the
23 member of the combined reporting group that has the most significant operations on
24 a recurring basis in this state, as determined by the department.

1 (5) FILING RETURNS. (a) *Corporations with the same accounting period.*
2 Corporations that must file a combined report under this section and that have the
3 same accounting period may file a group return, as prescribed by the department,
4 that reports the aggregate state franchise or state income tax liability of all of the
5 members of the combined reporting group. Corporations that are required to file a
6 combined report under this section may file separate returns reporting the
7 respective apportionment of the corporation's state franchise or state income tax
8 liability as determined under sub. (2), if each corporation filing a separate return
9 pays its own apportionment of its state franchise or state income tax liability.

10 (b) *Corporations with different accounting periods.* Corporations that are
11 required to file a combined report and that have different accounting periods shall
12 file separate returns and shall use the actual figures from the corporations' financial
13 records to determine the proper income and income-related computations to convert
14 to a common accounting period. Corporations that are required to file a combined
15 report may use a proportional method to convert income to a common accounting
16 period if the results of the proportional method do not materially misrepresent the
17 income apportioned to this state. The apportionment factors under ss. 71.25 and
18 71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to
19 the same method used to determine the income under ss. 71.26 and 71.45 for the
20 common accounting period. If a corporation performs an interim closing of its
21 financial records to determine the income attributable to the common accounting
22 period, the actual figures from the interim closing shall be used to convert the
23 apportionment factors and tax credits to the common accounting period.

24 (c) *Designated agent.* 1. For corporations that are subject to this section and
25 that file a group return under par. (a), the parent corporation of the combined

1 reporting group is the sole designated agent for each member of the combined
2 reporting group including the parent corporation, if the parent corporation is a
3 taxpayer member of the combined reporting group and income of the parent
4 corporation is included on the group return. If the parent corporation is not a
5 taxpayer member or if the parent corporation's income is not included on the group
6 return, the taxpayer members may appoint a taxpayer member to be the designated
7 agent. If the parent corporation of the combined reporting group is not eligible to be
8 the designated agent and no taxpayer member is appointed to be the designated
9 agent, the designated agent is the taxpayer member that has the most significant
10 operations in this state on a recurring basis, as determined by the department. The
11 designated agent, as determined under this subdivision, remains the designated
12 agent until the designated agent is no longer a taxpayer member or until the
13 taxpayer members appoint a different designated agent. If the designated agent
14 changes, the combined reporting group shall notify the department of such a change,
15 in a manner prescribed by the department.

16 2. The designated agent shall file the group return under par. (a), shall file for
17 any extensions under s. 71.24 (7) or 71.44 (3), shall file amended reports and claims
18 for refund or credit, and shall send and receive all correspondence with the
19 department regarding a group return. Any notice the department sends to the
20 designated agent is considered a notice sent to all members of the combined reporting
21 group. Any refund with respect to a group return shall be paid to and in the name
22 of the designated agent and shall discharge any liability of the state to any member
23 of a combined reporting group regarding the refund. The combined reporting group
24 filing a group return under par. (a) shall pay all taxes, including estimated taxes, in
25 the designated agent's name. The designated agent shall participate on behalf of the

1 members of the combined reporting group in any investigation or hearing requested
2 by the department regarding a group return and shall produce all information
3 requested by the department regarding a group return. The designated agent may
4 execute a power of attorney on behalf of the members of the combined reporting
5 group. The designated agent shall execute waivers, closing agreements, and other
6 documents regarding a group return filed under par. (a) and any waiver, agreement,
7 or document executed by the designated agent shall be considered as executed by all
8 members of the combined reporting group. If the department acts in good faith with
9 a combined reporting group member that represents itself as the designated agent
10 for the combined reporting group but that combined reporting group member is not
11 the designated agent, any action taken by the department with that combined
12 reporting group member has the same effect as if that combined reporting group
13 member were the actual designated agent for the combined reporting group.

14 (d) *Part-year members.* If a corporation becomes a member of a combined
15 reporting group or ceases to be a member of a combined reporting group after the
16 beginning of a common accounting period, the corporation's income shall be
17 apportioned to this state as follows:

18 1. If the corporation is required to file 2 or more short period federal returns
19 for the common accounting period, the income for the short period that the
20 corporation was a member of a combined reporting group shall be determined as
21 provided under sub. (2), the corporation shall join in filing a combined report for that
22 short period, and the corporation may join in filing a group return for that short
23 period. The income for the remaining short period shall be reported on a separate
24 return under s. 71.26 or 71.45. If the corporation becomes a member of another

1 combined reporting group in the remaining short period, the corporation's income
2 shall be determined for the remaining short period as provided under sub. (2).

3 2. If the corporation is not required to file federal short period returns, the
4 corporation shall file a separate return. Income shall be determined as follows:

5 a. As provided under sub. (2) for any period that the corporation was a member
6 of a combined reporting group.

7 b. As a separate entity under s. 71.26 or 71.45 for any period that the
8 corporation was not a member of a combined reporting group.

9 (e) *Amended group return.* The election to file a group return under this section
10 applies to an amended group return that includes the same corporations that joined
11 in the filing of the original group return. Under this section, an amended group
12 return shall be filed as follows:

13 1. If an election to file a group return that is in effect for a taxable year is
14 revoked for the taxable year because the combined reporting group that filed the
15 group return is not subject to sub. (2), as determined by the department, the
16 designated agent for the combined reporting group may not file an amended group
17 return. The designated agent and each corporation that joined in filing the group
18 return shall file a separate amended return. To compute the tax due on a separate
19 amended return, a corporation that files a separate amended return shall consider
20 all of the payments, credits, or other amounts, including refunds, that the designated
21 agent allocated to the corporation.

22 2. If a change in tax liability under this section is the result of the removal of
23 a corporation from a combined reporting group because the corporation was not
24 eligible to be a member of the combined reporting group for the taxable year, as

1 determined by the department, the designated agent shall file an amended group
2 return and the ineligible corporation shall file a separate amended return.

3 3. If a corporation erroneously fails to join in the filing of a group return, the
4 designated agent shall file an amended group return that includes the corporation.
5 If a corporation that erroneously fails to join in the filing of a group return has filed
6 a separate return, the corporation shall file an amended separate return that shows
7 no net income, overpayment, or underpayment, and shows that the corporation has
8 joined in the filing of a group return.

9 **(6) INCOME COMPUTATION UNDER COMBINED REPORTING.** For the purposes of sub.
10 (2), income attributable to this state shall be determined as follows:

11 (a) Determine the net income of each member of a combined reporting group
12 under s. 71.26 or 71.45, as appropriate, before deducting net business losses. A
13 member of a combined reporting group may determine its net loss or net income
14 under a method of accounting or an election authorized under s. 71.26 (3) (y), 71.30
15 (1), 71.45 (2) (a) 13., or 71.49 (2), as appropriate, regardless of the accounting method
16 used to determine the net loss or net income of other members of the combined
17 reporting group. After a member establishes an accounting method, or makes any
18 election under this section, the member's net loss or net income shall be consistently
19 determined in the combined report of all members of the combined reporting group
20 and in the group return filed by the taxpayer members or in the separate return filed
21 by the members. If a corporation is engaged in 2 or more trades or businesses that
22 are required to use different apportionment formulas under s. 71.25 or 71.45, the net
23 income for each trade or business shall be computed separately. A unitary business
24 with operations in a foreign country shall compute its net loss or net income as
25 provided by rule by the department.

1 (b) Adjust each member's income, as determined under par. (a), as provided
2 under s. 71.30.

3 (c) From the amount determined under par. (b), subtract intercompany
4 transactions, as provided by rule by the department, such that intercompany
5 accounts of assets, liabilities, equities, income, costs, or expenses are excluded from
6 the income determination to accurately reflect the income, the apportionment
7 factors, and the tax credits in a combined report that is filed under this section. An
8 intercompany transaction includes the following:

9 1. Income or gain from sales, exchanges, contributions, or other transfers of
10 tangible or intangible property from a member of the combined reporting group to
11 another member of the combined reporting group.

12 2. Annual rent paid by a member of the combined reporting group to another
13 member of the combined reporting group.

14 3. Annual license fees or royalties paid by a member of the combined reporting
15 group to another member of the combined reporting group.

16 4. Loans, advances, receivables, and similar items that one member of the
17 combined reporting group owes to another member of the combined reporting group,
18 including interest income and interest expense related to these items.

19 5. Stock or other equity of a member of the combined reporting group that is
20 owned or controlled by another member of the combined reporting group.

21 6. Except as provided by rule by the department, dividends paid out of earnings
22 or profits and paid by a member of the combined reporting group to another member
23 of the combined reporting group.

24 7. Management or service fees paid by a member of the combined reporting
25 group to another member of the combined reporting group.

1 8. Income or expenses allocated or charged by a member of the combined
2 reporting group to another member of the combined reporting group.

3 (d) From the amount determined under par. (c) for each member of a combined
4 reporting group, subtract nonapportionable income, net of related expenses, and add
5 nonapportionable losses, net of related expenses, to determine each member's
6 apportionable net income or apportionable net loss.

7 (e) Calculate the apportionment factors under sub. (7) and multiply each
8 member's apportionable net income or apportionable net loss, as determined under
9 par. (d), by the member's apportionment factor as determined under sub. (7).

10 (f) For each corporation, combine the amounts determined under par. (e) for
11 each trade or business.

12 (g) To the amounts determined under par. (f), add each member's
13 nonapportionable income attributable to this state and subtract each member's
14 nonapportionable losses attributable to this state.

15 (h) If the combined reporting group is not filing a group return, combine the
16 amounts determined under par. (g) for all members of the combined reporting group.

17 (i) If the combined reporting group is filing a group return, combine the
18 amounts determined under par. (g) for all members of the combined reporting group
19 that join in filing the group return.

20 (j) From the amount determined under par. (h) or (i), as appropriate, subtract
21 the combined reporting group's net operating loss as determined under sub. (8).

22 **(7) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING.** For the
23 purposes of sub. (2), this state's apportionment factors are determined as follows:

1 (a) 1. Determine the numerator and the denominator of the apportionment
2 factors as determined under s. 71.25 or 71.45, as appropriate, for each member of the
3 combined reporting group, except as provided in subd. 2.

4 2. If a member of a combined reporting group is not subject to the tax imposed
5 under s. 71.23 or 71.43 because it does not have sufficient connection to this state as
6 a separate entity for income or franchise tax purposes, as determined by the
7 department, the numerator of the member's sales factor under s. 71.25 (9) or
8 apportionment factor under s. 71.45 (3) is zero. If a member of a combined reporting
9 group is a corporation engaged in business wholly within this state, as provided
10 under s. 71.25 (4), the numerator and denominator of the member's apportionment
11 factors is the same. If a member of a combined reporting group is not subject to an
12 income or franchise tax as a separate entity in the state to which a sale is attributed,
13 the sale is attributed to this state.

14 (b) Subtract intercompany transactions under sub. (6) (c) from both the
15 numerators and the denominators as determined under par. (a).

16 (c) Add the denominators of the apportionment factors for each member of the
17 combined reporting group, as determined under par. (b), to arrive at the combined
18 denominator.

19 (d) Compute each corporation's apportionment factors by dividing the
20 corporation's numerator as determined under par. (b) by the combined denominator
21 as determined under par. (c).

22 **(8) NET BUSINESS LOSS CARRY-OVER.** (a) For taxable years beginning after
23 December 31, 2007, any net business loss of a corporation that is a member of a
24 combined reporting group as determined under sub. (6) for the taxable year that is
25 not offset against the net income of the other members of the combined reporting

1 group in the same taxable year may be carried forward as provided under s. 71.26
2 (4), except that any net business loss carried forward to a subsequent taxable year
3 may be offset against either the net income of the corporation that incurred the net
4 business loss or the net income of the combined reporting group of which the
5 corporation is a member, in the manner prescribed by rule by the department.

6 (b) A corporation that is a member of a combined reporting group may not carry
7 forward a net business loss from a taxable year beginning before January 1, 2008,
8 if the corporation was not subject to the tax imposed under s. 71.23 or 71.43 for the
9 same taxable year.

10 (c) A corporation that is a member of a combined reporting group and that
11 incurred a Wisconsin net business loss in a taxable year beginning before January
12 1, 2008, that has not been offset against the corporation's net income in subsequent
13 taxable years, may offset the remaining net business loss against the corporation's
14 net income as determined under sub. (6). If the corporation joins in filing a group
15 return under sub. (5) and the corporation's remaining net business loss exceeds the
16 corporation's net income as determined under sub. (6) for the first taxable year
17 beginning after December 31, 2007, that the corporation is subject to this section, the
18 corporation may annually offset up to 20 percent of the remaining net business loss
19 against the net income of the other members of the combined reporting group that
20 join in filing a group return under sub. (5).

21 **(9) NET INCOME OR LOSS FOR CORPORATIONS WITH DIFFERENT ACCOUNTING PERIODS.**

22 If a taxpayer member has a different accounting period than the common accounting
23 period of the combined reporting group, the combined reporting group shall assign
24 the combined report income or loss for the combined reporting group, as determined
25 under sub. (6), proportionally to the number of months in the taxpayer member's

1 taxable year that are wholly or partly within the combined reporting group's common
2 accounting period. The total amount of income or loss assigned to a taxpayer member
3 under this subsection for the portions of the common accounting period that are
4 included in the taxpayer member's taxable period shall be aggregated or netted to
5 determine the taxpayer member's apportionable income.

6 **(10) NET TAX LIABILITY.** (a) A corporation that files a separate return under this
7 section shall determine its net tax liability as follows:

8 1. Multiply the amount determined under sub. (6) (i) for the corporation by the
9 tax rate under s. 71.27 or 71.46, as appropriate.

10 2. From the amount determined under subd. 1., subtract the corporation's tax
11 credits under s. 71.28 or 71.47 based on the corporation's expenses. The corporation
12 may not offset any of its tax credits, or tax credit carry forwards, against the tax
13 liability of any other member of the combined reporting group to which the
14 corporation belongs.

15 (b) A combined reporting group that files a group return under this section shall
16 determine its net tax liability as follows:

17 1. Multiply the amount determined under sub. (6) (i) for the combined reporting
18 group by the tax rate under s. 71.27 or 71.46, as appropriate.

19 2. From the amount determined under subd. 1., subtract the tax credits under
20 ss. 71.28 and 71.47 for all taxpayer members of the combined reporting group.

21 **(11) ESTIMATED TAX PAYMENTS.** (a) For the first 2 taxable years that a group
22 return is filed under this section, estimated taxes under ss. 71.29 and 71.48 may be
23 paid on a group basis or on a separate basis. The amount of any separate estimated
24 taxes paid in the first 2 taxable years that a group return is filed shall be credited
25 against the group's tax liability. The designated agent shall notify the department

1 of any estimated taxes paid on a separate basis in the first 2 taxable years that a
2 group return is filed.

3 (b) If a group return is filed for 2 consecutive taxable years, estimated taxes
4 under ss. 71.29 and 71.48 shall be paid on a group basis for each subsequent taxable
5 year until such time as separate returns are filed by the corporations that were
6 members of a combined reporting group that filed group returns under this section.
7 For each taxable year in which combined estimated taxes are paid under this
8 subsection, the department shall consider the combined reporting group filing a
9 group return to be one taxpayer for purposes of computing interest on the
10 underpayment of estimated taxes. If a corporation subject to this section files a
11 separate return in a taxable year following a year in which the corporation joined in
12 filing a group return, the amount of any estimated tax payments made on a group
13 basis for the previous year shall be credited against the tax liability of the corporation
14 that files a separate return, as allocated by the designated agent with the
15 department's approval.

16 (c) If a combined reporting group pays estimated taxes on a group basis for a
17 taxable year or for any part of a taxable year, and the members of the combined
18 reporting group file separate returns for the taxable year, the designated agent, with
19 the department's approval, shall allocate the estimated tax payments among the
20 members of the combined reporting group.

21 (d) If estimated taxes are paid on a group basis for a taxable year but the group
22 does not file a group return for the taxable year and did not file a group return for
23 the previous taxable year, the estimated tax shall be credited to the member of the
24 combined reporting group that made the estimated tax payment on the group's
25 behalf.

1 (e) If a combined reporting group that will file a group return applies for a
2 refund of estimated taxes under s. 71.29 (3m), the department shall determine the
3 combined reporting group's eligibility for a refund on a group basis.

4 **(12) INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX.** (a) *General.* The amount
5 of interest that is due for an underpayment of estimated taxes under sub. (11) shall
6 be computed as follows:

7 1. For the first year in which a combined reporting group files a group return,
8 the amount of interest that is due for an underpayment of estimated taxes shall be
9 determined by using the aggregate of the tax and income shown on the returns filled
10 by the members of the combined reporting group for the previous year.

11 2. For any year in which a combined reporting group files a group return, the
12 department shall determine if the combined reporting group qualifies for the
13 exception to interest under s. 71.29 (7) (b) by using the aggregate of the amount of
14 the tax liability and the amount of the net income of all members of the combined
15 reporting group.

16 3. For any year in which a combined reporting group files a group return, the
17 department shall determine if the installment provisions under s. 71.29 (9) or (10)
18 apply to the combined reporting group by using the aggregate of the amount of the
19 tax liability and the amount of the net income of all members of the combined
20 reporting group.

21 4. For estimated taxes paid under sub. (11) (c), the amount of interest that is
22 due from a member of a combined reporting group for an underpayment of estimated
23 taxes paid by the member shall be determined by using the member's separate items
24 from the group return filed for the previous year and the member's allocated share
25 of the combined estimated tax payments for the current year. The designated agent

1 shall report the member's allocated share of the combined estimated tax payments
2 for the current year to the department, in the manner prescribed by the department.

3 (b) *Entering a group.* If a corporation becomes a member of a combined
4 reporting group during a common accounting period under sub. (4), the combined
5 reporting group shall make the following adjustments to determine the amount of
6 interest that is due for an underpayment of estimated taxes:

7 1. If a corporation becomes a member of a combined reporting group at the
8 beginning of a common accounting period, the combined reporting group shall
9 include with the corresponding items on the group return for the previous common
10 accounting period the separate items shown on the corporation's return for the
11 previous taxable year.

12 2. If a corporation is not a member of a combined reporting group for an entire
13 common accounting period, the combined reporting group shall include with the
14 corresponding items on the group return for the current taxable year the
15 corporation's separate items for that portion of the common accounting period that
16 the corporation was not a member of the combined reporting group.

17 3. To determine the separate items under subds. 1. and 2., if a corporation is
18 a member of a combined reporting group during a portion of a common accounting
19 period in which the corporation becomes a member of another combined reporting
20 group, the corporation's separate items shall include the separate items that are
21 attributed to the corporation by the designated agent of the first combined reporting
22 group.

23 (c) *Leaving a group.* If a corporation leaves a combined reporting group during
24 a common accounting period under sub. (4), the combined reporting group shall make

1 the following adjustments to determine the amount of interest that is due for an
2 underpayment of estimated taxes:

3 1. If a corporation leaves a combined reporting group before the first day of a
4 common accounting period, the combined reporting group shall exclude the separate
5 items that the designated agent of the combined reporting group attributed to the
6 corporation for the preceding common accounting period from the corresponding
7 items of the combined reporting group for the preceding common accounting period.

8 2. If a corporation leaves a combined reporting group after the first day of a
9 common accounting period, the combined reporting group shall exclude the separate
10 items that the designated agent of the combined reporting group attributed to the
11 corporation for the common accounting period from the corresponding items of the
12 combined reporting group for the current common accounting period.

13 3. A corporation that leaves a combined reporting group shall use the separate
14 items that the designated agent of the combined reporting group attributed to the
15 corporation to determine the amount of interest that is owed for any underpayment
16 of estimated taxes under sub. (11) for the first taxable year beginning after the day
17 that the corporation leaves the combined reporting group or, for a corporation that
18 has a different accounting period than the combined reporting group, for the portion
19 of the corporation's separate taxable year that remains after the day that the
20 corporation leaves the combined reporting group.

21 **(13) ASSESSMENT NOTICE.** If the department sends a notice of taxes that are
22 owed by a combined reporting group to the designated agent of a combined reporting
23 group, the notice shall name each corporation that joined in filing the group return
24 related to the notice during any part of the period covered by the notice. The
25 department's failure to name a corporation on a notice under this subsection shall

1 not invalidate the notice as to the unnamed corporation. Any levy, lien, or other
2 proceeding to collect the amount of a tax assessment under this section shall name
3 the corporation from which the department shall collect the assessment. If a
4 corporation that joined in the filing of a group return leaves the combined reporting
5 group, the department shall send the corporation a copy of any notice sent to the
6 combined reporting group under this subsection if the corporation notifies the
7 department that the corporation is no longer a member of the combined reporting
8 group and if the corporation requests in writing that the department send notices
9 under this subsection to the corporation. The department's failure to comply with
10 a corporation's request to receive a notice does not affect the tax liability of the
11 corporation.

12 (14) LIABILITY FOR TAX, INTEREST, AND PENALTY. If members of a combined
13 reporting group file a group return, the members of the combined reporting group
14 shall be jointly and severally liable for any combined tax, interest, or penalty. The
15 liability of a member of a combined reporting group for any combined tax, interest,
16 or penalty shall not be reduced by an agreement with another member of the
17 combined reporting group or by an agreement with another person.

18 (15) PRESUMPTIONS AND BURDEN OF PROOF. A commonly controlled group shall
19 be presumed to be engaged in a unitary business and all of the income of the unitary
20 business shall be presumed to be apportionable business income under this section.
21 A corporation, partnership, or limited liability company has the burden of proving
22 that it is not a member of a commonly controlled group that is subject to this section.
23 The department shall promulgate rules to implement this subsection.

24 (16) INFORMATION. (a) A member of a commonly controlled group shall retain
25 any information, and provide such information to the department at the

1 department's request, that the department considers necessary to administer this
2 section, including all documents submitted to or obtained from the Internal Revenue
3 Service or other states regarding income and taxing jurisdiction.

4 (b) A member of a commonly controlled group shall identify, at the department's
5 request, the name, job title, and address of the member's principal officers or
6 employees who have substantial knowledge of, and access to, documents that specify
7 the pricing policies, profit centers, cost centers, and methods of allocating income and
8 expenses among cost centers related to the operations of the member.

9 (c) A member of a commonly controlled group shall retain all information
10 provided under par. (a) during any period for which the member's tax liability to this
11 state is subject to adjustment, including any period in which the state may assess
12 additional income or franchise taxes, an appeal of the member's tax assessment is
13 pending, or a suit related to the member's tax liability is pending.

14 (17) CORPORATIONS NOT FILING. If a corporation that is required to report under
15 this section directly or indirectly owns or controls any other corporation, or is directly
16 or indirectly owned or controlled by another corporation, the department may
17 require that such other corporations join in filing a combined report under this
18 section."

19 **2.** Page 962, line 18: after that line insert:

20 "SECTION 2032d. 71.26 (3) (x) of the statutes is amended to read:

21 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
22 consolidated returns) are excluded, except to the extent that they pertain to
23 intercompany transactions and the carry-forward of net business loss under s.

is provided under section 1.502 of the federal treasury regulations as it relates to deferred gain or loss from an intercompany sale

1 71.255 and except that they are modified so that more than 50 percent ownership is
2 substituted for at least 80 percent ownership. *13* *Insert 25-2*

3 **SECTION 2032g.** 71.26 (4) of the statutes is amended to read:

4 71.26 (4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option
5 corporation or an insurer to which s. 71.45 (4) applies, may offset against its
6 Wisconsin net business income any Wisconsin net business loss sustained in any of
7 the next 15 preceding taxable years, if the corporation was subject to taxation under
8 this chapter in the taxable year in which the loss was sustained, to the extent not
9 offset by other items of Wisconsin income in the loss year and by Wisconsin net
10 business income of any year between the loss year and the taxable year for which an
11 offset is claimed. For purposes of this subsection Wisconsin net business income or
12 loss shall consist of all the income attributable to the operation of a trade or business
13 in this state, less the business expenses allowed as deductions in computing net
14 income. The Wisconsin net business income or loss of corporations engaged in
15 business within and without the state shall be determined under s. 71.255 or 71.25
16 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25
17 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income
18 having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be
19 included in other items of Wisconsin income and Wisconsin net business income for
20 purposes of this subsection.”

21 **3.** Page 974, line 8: after that line insert:

22 “**SECTION 2060md.** 71.29 (2) of the statutes is amended to read:

1 71.29 (2) WHO SHALL PAY. Every Except as provided in s. 71.255 (11), every
2 corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity
3 subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.”.

4 **4.** Page 1008, line 17: after that line insert:

5 **“SECTION 2086d.** 71.44 (1) (a) of the statutes is amended to read:

6 71.44 (1) (a) Every Except as provided in par. (e), every corporation, except
7 corporations all of whose income is exempt from taxation and except as provided in
8 sub. (1m), shall furnish to the department a true and accurate statement, on or before
9 March 15 of each year, except that returns for fiscal years ending on some other date
10 than December 31 shall be furnished on or before the 15th day of the 3rd month
11 following the close of such fiscal year and except that returns for less than a full
12 taxable year shall be furnished on or before the date applicable for federal income
13 taxes under the internal revenue code, in such manner and form and setting forth
14 such facts as the department deems necessary to enforce this chapter. Every
15 corporation that is required to furnish a statement under this paragraph and that
16 has income that is not taxable under this subchapter shall include with its statement
17 a report that identifies each item of its nontaxable income. The statement shall be
18 subscribed by the president, vice president, treasurer, assistant treasurer, chief
19 accounting officer or any other officer duly authorized so to act. In the case of a return
20 made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The
21 fact that an individual’s name is subscribed on the return shall be prima facie
22 evidence that the individual is authorized to subscribe the return on behalf of the
23 corporation.

24 **SECTION 2086e.** 71.44 (1) (e) of the statutes is created to read:

1 71.44 (1) (e) A corporation that is a member of a commonly controlled group,
2 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.
3 71.255 (1) (m), shall file a tax return under s. 71.255.”.

4 **5.** Page 1009, line 16: after that line insert:

5 “SECTION 2088d. 71.46 (3) of the statutes is repealed.”.

6 **6.** Page 1021, line 5: after that line insert:

7 “SECTION 2116md. 71.48 of the statutes is amended to read:

8 **71.48 Payments of estimated taxes.** Sections Except as provided in s.
9 71.255 (11), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under
10 this chapter.”.

11 **7.** Page 1038, line 16: after that line insert:

12 “SECTION 2139g. 71.84 (2) (a) of the statutes is amended to read:

13 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
14 of estimated tax under s. 71.255, 71.29 or 71.48 there shall be added to the aggregate
15 tax for the taxable year interest at the rate of 12% per year on the amount of the
16 underpayment for the period of the underpayment. For corporations, except as
17 provided in par. (b), “period of the underpayment” means the time period from the
18 due date of the installment until either the 15th day of the 3rd month beginning after
19 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the
20 tax shown on the return is not paid by the 15th day of the 3rd month following the
21 close of the taxable year, the difference between that amount and the estimated taxes
22 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)
23 (a).”.

24 ~~8.~~ Page 1661, line 23: after that line insert:

7022(9)

and

1 “(3i) COMBINED REPORTING. The treatment of sections ~~71.25 (9) (a)~~, 71.255, 71.26
2 (3) (x) ~~and (4)~~, ~~71.29 (2)~~, ~~71.44 (1) (a) and (e)~~, ~~71.46 (3)~~, 71.48, and ~~71.84 (2) (a)~~ of the
3 statutes first applies to taxable years beginning on January 1, 2008.”.

4 (END)

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb0510/lins
JK:wlj:jf

Insert 1 - 1

~~1.~~ Page 922, line 2: after that line insert:

“SECTION 2017d. 71.22 (9) of the statutes is amended to read:

71.22 (9) “Person” includes corporations, unless the context requires otherwise. “Person” may include, as determined by the department, any individual, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, syndicate, estate, trust, trustee in bankruptcy, receiver, executor, administrator, assignee, or organization.”.

History: 1987 a. 312; 1987 a. 411 ss. 14, 19, 109, 112; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237, 252, 299; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33; 2005 a. 25, 49.

Insert 2 - 10

(a) “Combined group” means the group of all persons whose income and apportionment factors are considered under sub. (2) to determine the taxpayer’s share of the net business or loss that is apportionable to this state.

Insert 3 - 20

(d) “Corporation” means a corporation, as defined in s. 71.22 (1k), that, regardless of where the corporation is located, would be subject to the taxes imposed under this chapter, if the corporation were doing business in this state. For purposes of this section, the business conducted by a pass-through entity that is directly or indirectly held by a corporation is considered the corporation’s business proportionate to the corporation’s distributive share of the pass-through entity’s income. “Corporation” does not include a tax-option corporation.

Insert 4 - 10

(f) “Internal Revenue Code” means the Internal Revenue Code as defined in s. 71.22 (4) and (4m), including any provision of a federal tax treaty that expressly

1 applies to the states of the United States, but not including any other application of
2 a federal tax treaty.

3 (g) "Pass-through[✓] entity" means a general or limited partnership, any
4 organization that is treated as a partnership for purposes of this chapter, a real
5 estate investment trust, a regulated investment company, a real estate mortgage
6 investment conduit, a financial asset securitization investment trust, a trust, or an
7 estate.

8 (h) "Tax haven"[✓] means a jurisdiction that, for any taxable year, is identified by
9 the organization for economic cooperation and development as a tax haven or as
10 having a harmful, preferential tax regime or has no, or a nominal, effective tax on
11 income and all of the following apply:

12 1. The jurisdiction has laws or practices that prevent the effective exchange of
13 information, for tax purposes, with other governments on taxpayers benefiting from
14 the tax regime.

15 2. The details of the legislative, legal, or administrative provisions of the
16 jurisdiction's tax regime are not publicly available and apparent or are not
17 consistently applied to similarly situated taxpayers or the information needed by tax
18 authorities to determine a taxpayer's correct tax liability, including accounting
19 records and underlying documentation, is not adequately available.

20 3. The jurisdiction facilitates the establishment of foreign-owned entities
21 without requiring a local substantive presence or prohibits such entities from having
22 any commercial impact on the local economy.

23 4. The tax regime explicitly or implicitly excludes the jurisdiction's resident
24 taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises
25 that benefit from the regime from operating in the jurisdiction's domestic market.

1 5. The jurisdiction has created a tax regime that is favorable for tax avoidance,
2 based upon an overall assessment of relevant factors, including whether the
3 jurisdiction has a significant untaxed offshore financial or other services sector
4 relative to its overall economy.

Insert 24 - 18

5 (j) "Unitary business" means a single economic enterprise that consists of
6 separate parts of a single business entity or of a commonly controlled group of
7 business entities that are sufficiently interdependent, integrated, and interrelated
8 by their activities so as to provide a synergy and a mutual benefit that produces a
9 sharing or exchange of value among them and a significant flow of value to the
10 separate parts. For purposes of this section, 2 or more business entities are
11 considered a unitary business if the entities have unity of ownership, operation, and
12 use, as indicated by centralized management or a centralized executive force;
13 centralized purchasing, advertising, or accounting; intercorporate sales or leases;
14 intercorporate services; intercorporate debts; intercorporate use of proprietary
15 materials; interlocking directorates; or interlocking corporate officers. Any business
16 conducted by a pass-through entity that is owned directly or indirectly by a
17 corporation is considered conducted by the corporation, to the extent of the
18 corporation's distributive share of the pass-through entity's income, regardless of
19 the percentage of the corporation's ownership interest. A business conducted
20 directly or indirectly by one corporation is unitary with that portion of a business
21 conducted by another corporation through its direct or indirect interest in a
22 pass-through entity, if the corporations are sufficiently interdependent, integrated,
23 and interrelated by their activities so as to provide a synergy and a mutual benefit

1 that produces a sharing or exchange of value among them and a significant flow of
2 value to the separate parts and the two corporations are members of the same
3 commonly controlled group.

4 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) A corporation
5 engaged in a unitary business with any other corporation shall file a combined report
6 that includes the income, determined under sub. (3),[✓] and apportionment factor,
7 determined under ~~s. 71.25~~ ^{and s. 71.25} and sub. (5),[✓] of the following members of the unitary
8 business:

9 1. Any member incorporated in the United States, including the District of
10 Columbia and any territory or possession of the United States, or formed under the
11 laws of any state, the District of Columbia, or any territory or possession of the
12 United States.

13 2. Any member, regardless of where the entity is incorporated or formed, if the
14 average of the following ratios is 20 percent or more:

15 a. The value of the member's real property and tangible personal property
16 located in the United States, including the District of Columbia and any territory or
17 possession of the United States, not including property that is used to produce
18 nonapportionable income, divided by the value of all of the member's real property
19 and tangible personal property, not including property that is used to produce
20 nonapportionable income. For purposes of this subd. 2. a.,[✓] the value of property that
21 the member rents is the net annual rental amount for the property, multiplied by 8.

22 b. The amount of the member's payroll that is paid in the United States,
23 including the District of Columbia and any territory or possession of the United
24 States, divided by the amount of the member's total payroll. For purposes of this
25 subd. 2. b.,[✓] payroll includes compensation paid to employees, but does not include

1 payroll used to produce nonapportionable income. The payroll paid in the United
2 States, including the District of Columbia and any territory or possession of the
3 United States, shall be determined in the same manner as payroll is determined for
4 this state under s. 71.25(8) (b) 1. to 5.

5 c. The member's sales in the United States, including the District of Columbia
6 and any territory or possession of the United States, divided by the member's total
7 sales. For purposes of this subd. 2. c., sales include items identified in s. 71.25 (9) (e),
8 but not items identified in s. 71.25 (9) (f), and the situs of a sale shall be determined
9 in the same manner as for state sales in s. 71.25 (9) (b), (d), (df) and (dh), not including
10 s. 71.25 (9) (b) 2m. and 3., (c), (df) 3. and (dh) 4.

11 3. Any member that is a domestic international sales corporation as described
12 in sections 991 to 994 of the Internal Revenue Code, a foreign sales corporation as
13 described in sections 921 to 927 of the Internal Revenue Code, or an export trade
14 corporation as described in sections 970 to 971 of the Internal Revenue Code.

15 4. Any member that is a controlled foreign corporation as defined in section 957
16 of the Internal Revenue Code, to the extent of the member's income that is defined
17 in Section 952 of of the Internal Revenue Code, including any lower-tier subsidiary's
18 distribution of such income that was previously taxed, determined without regard
19 to federal treaties, and the apportionment factors related to that income. For
20 purposes of this subdivision, any item of income received by a controlled foreign
21 corporation is excluded if the income was subject to an income tax imposed by a
22 foreign country at an effective tax rate greater than 90 percent of the maximum tax
23 rate specified in section 11 of the Internal Revenue Code.

24 5. Any member that earns more than 20 percent of its income, directly or
25 indirectly, from intangible property or service related activities that are deductible

1 against the business income of other members of the combined group, to the extent
2 of that income and the apportionment factors related^{to} that income.

3 6. Any member that is doing business in a tax haven, if the member is engaged
4 in an activity that is sufficient for that tax haven jurisdiction to impose a tax under
5 federal law. If the member's business activity in a tax haven is entirely outside the
6 scope of the laws and practices that cause the jurisdiction to be a tax haven, the
7 member's business activity is not considered to be conducted in a tax haven for
8 purposes of this section.

9 7. Any member not described in subds. 1. to 6.,[✓] to the extent that its income is
10 derived from or attributable to sources within the United States, including the
11 District of Columbia and any territory or possession of the United States, as
12 determined under the Internal Revenue Code and by its apportionment factors
13 related to that income.

14 (b) The department may require that a combined report filed under this section
15 include the income and associated apportionment factors of any persons not
16 described under par. (a) that are members of a unitary business[✓] in order to reflect the
17 proper apportionment of income of the entire unitary business, including persons
18 that are not, or would not be, subject to the taxes imposed under this chapter if doing
19 business in this state.

20 (3) COMPONENTS OF INCOME SUBJECT TO TAX. Each taxpayer member is
21 responsible for the tax imposed under this chapter based on its taxable income or loss
22 apportioned or allocated to this state, including:

23 (a) Its share of any business income apportionable to this state of each of the
24 combined groups of which it is a member, as determined under subs. (4) and (5).[✓]

(b) Its share of any business income apportionable to this state of a distinct business activity conducted in and outside this state wholly by the taxpayer member, as determined under s. 71.25.

(c) Its income from a business conducted wholly by the taxpayer member entirely in this state.

(d) Its income sourced to this state from the sale or exchange of capital or assets and from involuntary conversions, as determined under sub. (4) (a) 8!

(e) Its nonbusiness income or loss allocable to this state.

(f) Its income or loss allocated or apportioned in an earlier year that is state source income during the income year, other than a net business loss carryforward.

^{this subsection and} (g) Its net business loss carryforward. If the taxable income computed under subs. (3), (4) and (5) results in a loss for a taxpayer member of the combined group, the taxpayer member has a net business loss, subject to the net business loss limitations and carryforward provisions in s. 71.26 (4). The business loss is applied as a deduction in a subsequent year only if the taxpayer member has net income sourced to this state, regardless of whether the taxpayer is a member of a combined group in the subsequent year.

(4) BUSINESS INCOME OF THE COMBINED GROUP. The business income of a combined group is determined as follows:

(a) Compute the sum of the income of each member of the combined group as determined for federal income tax purposes, as if the members were not consolidated for federal purposes, and modified as provided under s. 71.26. Each member of the combined group shall determine its income as follows:

1. For any member incorporated in the United States, including the District of Columbia and any territory or possession of the United States, or included in a

1 consolidated federal corporate income tax return, the income included in the total
2 income of the combined group is the corporation's taxable income as determined
3 under s. 71.26. ✓

4 2. Except as provided in subd. 3, for any member not included in subd. 1., ✓ the
5 income included in the total income of the combined group shall be determined as
6 follows:

7 a. Each foreign branch or foreign corporation shall prepare a profit and loss
8 statement in the currency in which the branch's or corporation's books of account are
9 regularly maintained.

10 b. The member shall adjust any statement prepared under subd. 2. a. to
11 conform to the accounting principles generally accepted in the United States for the
12 preparation of profit and loss statements.

13 c. The member shall adjust any statement prepared under subd. 2. a. to
14 conform to the tax accounting standards required by the department for the
15 administration of this chapter.

16 d. Each member of the combined group shall translate its profit and loss
17 statements, and the related apportionment factors, into the currency in which the
18 parent corporation maintains its books and records.

19 e. Each member shall express in U.S. dollars the income apportioned to this
20 state.

21 3. If the department determines that the income determination under this
22 ~~subdivision~~ ^{subsection} reasonably approximates income as determined under s. 71.26, any
23 member not included in subd. 1. may determine its income based on a consolidated
24 profit and loss statement that includes the member and that is prepared for the
25 purpose of filing, by related corporations, with the securities and exchange

1 commission. If the member is not required to file with the securities and exchange
2 commission, the department may allow, for purposes of this subdivision, the use of
3 the consolidated profit and loss statement prepared for reporting to shareholders
4 and subject to review by an independent auditor. If a statement described in this
5 subdivision does not reasonably approximate income as determined under s. 71.26,
6 the department may accept the statement if the member makes appropriate
7 adjustments to the statement, as determined by the department, *in order* to
8 approximate the income determined under s. 71.26.

9 4. If a unitary business includes income from a pass-through entity, the total
10 income of the combined group includes the member's direct and indirect distributive
11 share of the pass-through entity's unitary business income.

12 5. All dividends paid by one member to another are not included in the
13 recipients income, if the dividends are paid out of the earnings and profits of the
14 unitary business in the current taxable year or in an earlier taxable year. This
15 subdivision does not apply to dividends received from members of a unitary business
16 that are not a part of the combined group.

17 6. Except as provided by the department by rule, business income or loss from
18 an intercompany transaction between members of the same combined group shall be
19 deferred in a manner similar to 26 CFR 1.1502-13. Upon the occurrence of any of
20 the following events, deferred business income or loss resulting from an
21 intercompany transaction between members of a combined group shall be included
22 in the income of the seller and shall be apportioned as business income earned
23 immediately before the event:

24 a. The object of the deferred intercompany transaction is sold by the buyer to
25 an entity that is not a member of the combined group.

1 b. The object of the deferred intercompany transaction is sold by the buyer to
2 an entity that is a member of the combined group for use outside the unitary business
3 in which the buyer and seller are engaged.

4 c. The object of the deferred intercompany transaction is converted by the buyer
5 to a use outside the unitary business in which the buyer and seller are engaged.

6 d. The buyer and seller are no longer members of the same combined group,
7 regardless of whether the members remain a unitary business.

8 7. A charitable expense incurred by a member of a combined group, to the
9 extent allowable as a deduction under section 170 of the Internal Revenue Code,
10 shall be subtracted first from the business income of the combined group, subject to
11 the income limitations of section 170 of the Internal Revenue Code as it applies to
12 the entire business income of the group, and any remaining amount shall be treated
13 as a nonbusiness expense allocable to the member that incurred the expense, subject
14 to the income limitations of section 170 of the Internal Revenue Code as it applies
15 to the nonbusiness income of that member. Any charitable deduction described
16 under this subdivision that is allowed as a carryover deduction in a subsequent year
17 is considered to be originally incurred in the subsequent year by the same member,
18 and this section applies in the subsequent year for purposes of determining the
19 allowable deduction in that year.

20 8. Gain or loss from the sale or exchange of capital assets, property described
21 in section 1231 (a) (3) of the Internal Revenue Code, and property subject to an
22 involuntary[✓] conversion, is removed from the total separate net income of each
23 member of a combined group and is apportioned and allocated as follows:

24 a. For short[Ⓢ] term capital gains or losses, long[Ⓛ] term capital gains or losses, gains
25 or losses under section 1231 of the Internal Revenue Code, and involuntary

1 conversions, the business gain and loss of all members ^{are} ~~is~~ combined within each class
2 of net business gain or loss and each such class is separately apportioned to each
3 member using the member's apportionment percentage determined under sub. (5). ✓

4 b. Each taxpayer member shall net its apportioned business gain or loss for all
5 classes, as determined under subd. 8. a., including any such apportioned business
6 gain and loss from other combined groups, against the taxpayer member's
7 nonbusiness gain and loss for all classes allocated to this state as provided under
8 sections 1231 and 1222 of the Internal Revenue Code, not including nonbusiness
9 items allocated to another state.

10 c. Any resulting state source income or loss, if the loss is not subject to section
11 1211 of the Internal Revenue Code, of a taxpayer member produced by the
12 application of ~~the~~ subd. 8. a. and b. shall then be applied to all other state source
13 income or loss of that member.

14 d. Any resulting state source loss of a member that is subject to section 1211
15 of the Internal Revenue Code shall be carried forward or carried back by that
16 member and shall be treated as state source short-term capital loss incurred by that
17 member for the year for which the carryforward or carryback applies.

18 9. Any expense of one member of the unitary business that is directly or
19 indirectly attributable to the nonbusiness or exempt income of another member of
20 the unitary business shall be allocated to that other member as corresponding
21 nonbusiness or exempt expense, as appropriate.

22 (b) Subtract any nonbusiness income of the combined group from the amount
23 determined under par. (a) and add any nonbusiness expense or loss of the combined
24 group to the amount determined under par. (a).

1 **(5) TAXPAYER'S SHARE OF BUSINESS INCOME OF A COMBINED GROUP.** The taxpayer's
2 share of the business income apportionable to this state of each combined group of
3 which it is a member shall be the product of the business income of the combined
4 group as determined under sub. (4) and the taxpayer member's sales factor
5 percentage, determined under s. 71.25, modified as follows:

6 (a) Include in the numerator the taxpayer member's sales associated with the
7 combined group's unitary business in this state.

8 (b) Include in the numerator the taxpayer member's sales associated with the
9 combined group's unitary business to another state in which the taxpayer member
10 is not engaged in business, regardless of whether another member of the combined
11 group is engaged in business in the other state.

12 (c) Include in the denominator the sales of all members of the combined group,
13 including the taxpayer, that are associated with the combined group's unitary
14 business regardless of where that business is located.

15 (d) Include sales of a pass-through entity owned directly or indirectly by a
16 corporation in proportion to a ratio the numerator of which is the amount of the
17 corporation's distributive share of the pass-through entity's unitary income included
18 in the income of the combined group in under sub. (4) and the denominator of which
19 is the amount of the pass-through entity's total unitary income.

20 (e) Exclude sales between members of the combined group.

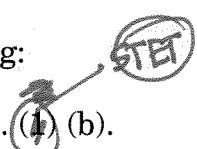
21 (f) If a member of a combined group is not subject to the taxes imposed under
22 s. 71.23 because it is not engaged in business in this state, the numerator of the
23 member's sales factor is zero.

24 **(6) CREDITS AND POST-APPORTIONMENT DEDUCTIONS.** No tax credit or
25 post-apportionment deduction earned by one member of the combined group, but not

1 completed used by or allowed to that member, may be used in whole or in part by
2 another member of the combined group or applied in whole or in part against the total
3 income of the combined group.

4 (7) DESIGNATED AGENT. (a) For purposes of administering this section, each
5 combined group shall ~~designate~~ ^{appoint} a sole designated agent. The designated agent is the parent
6 corporation of the combined group, if the parent corporation is a taxpayer member
7 of the combined group and the income of the parent corporation is included in the
8 combined report. If there is no such parent corporation, the designated agent may
9 be appointed by the taxpayer members. If there is no such parent corporation and
10 no taxpayer member is appointed, the designated agent is the taxpayer member that
11 has the most significant operations in this state on a recurring basis, as determined
12 by the department. The designated agent may change only when the designated
13 agent is no longer subject to the tax imposed under s. 71.23 (1) or (2), in which case
14 the combined group shall notify the department of such a change in the manner
15 prescribed by the department.

16 (b) The designated agent is responsible for acting on behalf of the taxpayer
17 members of the combined group and shall do all of the following:

- 18 1. File with the department a combined report under sub. (1) (b). 
- 19 2. File any extensions under s. 71.24. ✓
- 20 3. File any amended combined reports and claims for refund or credit.
- 21 4. Send and receive all correspondence with the department regarding the
22 combined report.
- 23 5. Remit all taxes, including estimated taxes, to the department. For purposes
24 of computing interest on late payments, all payments remitted are considered to be

1 made on a proportionate basis by all taxpayer members of the combined group,
2 unless otherwise specified by the designated agent.

3 6. Participate on behalf of the combined group members in any investigation
4 or hearing requested by the department regarding a combined report, produce all
5 information requested by the department regarding the combined report, and file
6 any appeal related to a combined report. Any appeal filed by the designated agent
7 is considered filed by all members of the combined group.

8 7. Execute any waiver, closing agreement, power of attorney, or other document
9 regarding the combined report filed under sub. (b). Any waiver, agreement, or
10 document executed by the designated agent is considered executed by all members
11 of the combined group.

12 8. Receive notices regarding the combined report. Any such notice the
13 department sends to the designated agent is considered sent to all taxpayer members
14 of the combined group.

15 9. Receive refunds regarding the combined report. Any such refund shall be
16 paid to and in the name of the designated agent and shall discharge any liability of
17 the state to any member of the combined group regarding the refund.

18 (c) The department may relieve the designated agent from any of the duties
19 described in par. (b) to the extent that the duties relate to income, expense, or loss
20 that is not includable in the business income of the combined group under sub. (4).
21 Unless the department provides for such relief by rule, a designated agent shall
22 obtain written approval from the department to be relieved of any such duties.

23 (8) TAXABLE YEAR OF THE COMBINED GROUP. (a) Except as provided in par. (b), the
24 combined group's taxable year is the designated agent's taxable year. If a member's
25 taxable year is different from the combined group's taxable year, the designated

1 agent may elect to determine the portion of each member's income to be included in
2 the combined report either from a separate income statement from each member that
3 is prepared by the member's books and records for the months that are included in
4 the combined group's taxable year or by including in the combined report all of the
5 income of each member for the year that ends during the combined group's taxable
6 year. Any election made under this paragraph remains in effect for subsequent years
7 unless the designated agent submits a request to the department to change the
8 election and the department approves in writing.

9 (b) If 2 or more members of a combined group file a federal consolidated return,
10 the combined group's taxable year is the taxable year that corresponds to the federal
11 consolidated return.

12 (9) PART-YEAR MEMBERS OF A COMBINED GROUP. If a corporation becomes a
13 member of a combined group, or ceases to be a member of a combined group, after
14 the beginning of the combined group's taxable year, the corporation's income shall
15 be determined as provided under subs. (3), (4), and (5) for that portion of the year in
16 which the corporation was a member of the combined group and the income shall be
17 included in the combined report. The income for the remaining short period shall be
18 reported on a separate return or separate combined report.

19 (10) PRESUMPTIONS AND BURDEN OF PROOF. A commonly controlled group is
20 presumed to be engaged in a unitary business and all of the income of the unitary
21 business is presumed to be apportionable business income under this section. A
22 corporation has the burden of proving that it is not a member of a combined group
23 that is subject to this section."

- 1 as provided under section 1502 of the U.S. treasury regulations as it relates to
2 deferred gain or loss from an intercompany transaction under s. 71.255 (4) (a) 6